

PATENT  
036835-46297

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Request For Continued Examination under 35 U.S.C. 1.14 :  
of the Patent Application of :  
Pascal Sebastian Bailon : Art Unit : 1647  
Serial No. : 09/604,938 :  
Filed : June 27, 2000 :  
Title : ERYTHROPOIETIN CONJUGATES :

Assistant Commissioner for Patents  
Washington, D.C. 20231

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DECLARATION II OF PASCAL S. BAILON

I, Pascal Bailon, a citizen and resident of the United States, hereby declare that:

I am the Pascal Bailon named in the Declaration Under 37 C.F.R. §1.132 of Pascal Sebastian Bailon, which I signed on May 20, 2002, and which I understand was submitted in the above-captioned patent Application SN 09/604 938 filed June 27, 2000. Among other information, I provided the data included in Declaration Tables 1 and 2.

After this Application allowed, I was asked to review my Declaration to make sure that the information I had provided was accurate. I understand that Roche is no longer relying on my Declaration, but I wish to point out certain errors and omissions, which I was not aware of when I signed my Declaration but which I became aware of during this review. The purpose of this declaration is to explain that these errors and omissions were made inadvertently and without deceptive intent. These errors and omissions are explained in greater detail in the Amendment to this Application dated November 19, 2002, which I have reviewed along with the underlying source material upon which the data in Declaration Tables 1 and 2 is based.

In my Declaration, I reported bioassay data on various EPO conjugates. I had not personally carried out these experiments, which were conducted by other Roche scientists at various times and places. In using these data in my Declaration, I made an erroneous assumption about the underlying experiments. I assumed that the bioassay tests had all been conducted according to the single protocol that is described in my Declaration. Based on that assumption, I included data obtained in separate bioassays in Tables 1 and 2. Whereas Table 2 correctly indicates that certain data were obtained in separate bioassays, in preparing Table 1, I inadvertently omitted a notation to indicate that these data were obtained in more than one experiment. I also never mentioned to my attorney that Table 1 included data from more than one experiment. Furthermore, because I did not obtain and review all the underlying source material for the bioassay data included in Tables 1 and 2, when I signed my Declaration I did not realize that these data had been generated using different bioassay protocols.

At the time my Declaration was being prepared, I was about to undergo major surgery and was distracted by my concerns about my health. For this reason, I now realize that I did not devote a sufficient amount of time to reviewing my Declaration and the underlying source material to ensure that all the statements I made were completely accurate. I made these errors inadvertently and did not intend to misrepresent any of the data reported in my Declaration.

I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that I make these statements with the knowledge that willful false statements are punishable by fine or imprisonment, or both, under Section 101 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated: 11/18/02

Pascal Bailon  
Pascal Bailon